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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
 JEREMY DAVIS, CHRISTOPHER
 CASTILLO, and MONIQUE TRUJILLO
 individually and on behalf of all other
 similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

William S. Carmody (admitted *pro hac vice*)
 Shawn Rabin (admitted *pro hac vice*)
 Steven M. Shepard (admitted *pro hac vice*)
 Alexander Frawley (admitted *pro hac vice*)
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Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFFS' MOTION TO COMPEL
 REGARDING DISPUTE P3**

INTRODUCTION

Since September 2020, Plaintiffs have sought relevant discovery concerning Plaintiffs' data (Dispute P3, RFP 18). Unfortunately, Google has persistently opposed this discovery, made limited and obscured productions,¹ and withheld relevant data that should have been produced pursuant to the Court orders.

Testimony by Google's 30(b)(6) representative, Dr. Glenn Berntson, on June 16 confirmed that Google is [REDACTED].
[REDACTED].
Berntson testified that Google [REDACTED]
[REDACTED] and that Google [REDACTED]
[REDACTED].

Based on that testimony and other recent discovery, Plaintiffs now request an order from the Court requiring Google to: (1) produce all data linked or mapped to any identifier associated with Plaintiffs or their devices, including without limitation (including all data associated or mapped with authenticated, unauthenticated, device-based, pseudonymous, and any other identifiers, such as [REDACTED]
[REDACTED]); (2) produce an adequately prepared corporate representative to testify about all of Google's mapping and tracking across all of Google's technologies; and (3) provide Plaintiffs' attorneys and experts, with the assistance of the Special Master, onsite access to a clean room in which Plaintiffs' attorneys and experts will be permitted to access and use internal Google tools, logs, and data for purposes of identifying the authenticated and unauthenticated data concerning the named Plaintiffs and their devices, including [REDACTED] reflected in Exhibit 1. Plaintiffs respectfully request the Court grant and compel this relief by July 16, 2021.

¹ Since briefing on these disputes was ordered, Google has very recently made voluminous productions: on the evening of June 14, Google produced approximately 59,280 pages of documents, and on the evening of June 18, Google made three productions to Plaintiffs totaling approximately 91,750 pages of documents. All previous productions totaled approximately 78,542 pages, chiefly consisting of Google's publicly-available policies. Plaintiffs have been reviewing and continue to review these documents.

BACKGROUND

On September 30, 2020, Plaintiffs served RFP No. 18 (Dispute P3). RFP 18 requests “Documents concerning Plaintiffs, including Plaintiffs’ use of Google services, all data collected by Google from and regarding Plaintiffs, and Google’s use of all data collected by Google from and regarding Plaintiffs.” *See* Dkt. 140 at 6–7. The parties met and conferred regarding this request, with Google demanding and Plaintiffs providing certain consent forms. Dkt. 133-1, at 3. Google never denied that Plaintiffs’ data is mapped and stored at Google; instead, Google has claimed that internal Google policies prevented it from accessing and producing Plaintiffs’ data. Plaintiffs at all times sought all data that Google has on Plaintiffs and their activity, as well as identifiers and other mechanisms by which Google maps and tracks Plaintiffs (whether by their accounts, devices, electronic addresses, or otherwise).

In late May and early June 2021, pursuant to Google’s request and the Court’s guidance, Plaintiffs provided Google with what Google deems “unauthenticated cookies’ values” in the form of [REDACTED] contained in cookies placed on Plaintiffs’ devices while they were browsing privately in Chrome’s Incognito mode. On June 2, this Court ordered Google to use those values to produce “all of the unauthenticated data that is associated from this search by th[o]se identifiers.” Dkt. 194-3, at 30:24–25. On June 9, Google produced what it alleged were “data associated with the [REDACTED] IDs in the Display Ad Log that has X-Client-Data Header information.” Ex. 3. Despite Plaintiffs repeatedly framing the scope of the request to include all data (*e.g.*, [REDACTED]), Google produced limited information based on those particular “unauthenticated cookies’ values,” without more. *See* Ex. 2. The values included [REDACTED] values, but Google did not provide any other data (*e.g.*, [REDACTED]) or explanation of this production. Ex. 3.

At the June 16 Rule 30(b)(6) deposition, Google produced Dr. Glenn Berntson, a Google engineering director focused on Google Ad Manager authorized buyers and open bidding. Dr. Berntson had limited knowledge of Google Analytics, was not familiar with technologies outside

1 of Google Ad Manager, and could not adequately explain technologies involved with mapping and
2 tracking Plaintiffs and their relevant activity. Ex. 5, at 17:24–19:18, 195:5–195:5; *see* Ex. 6
3 ([REDACTED]). Dr. Berntson was not prepared to
4 testify about Google’s [REDACTED]

5 Even though the parties repeatedly met and conferred about [REDACTED], an image of
6 which was included in a prior submission to the Court, Dkt. 177, at 11, Dr. Berntson was not
7 familiar with and unable to explain [REDACTED]
8 [REDACTED]. Ex. 5, at 48:16–51:16, 76:19–23, 149:17–150:20, 182:1–182:24, 184:16–185:9. For
9 example, [REDACTED]
10 [REDACTED] and Dr. Berntson was not
11 prepared to testify on [REDACTED]. Ex. 5 at 51:1–17, 150:15–20, 182:1–24. Plaintiffs had
12 asked Google to produce Plaintiffs’ authenticated and unauthenticated data associated with their
13 device identifiers and IP addresses as far back as May 21. Ex. 7. Although Google had refused to
14 produce this data, Google was on notice of Plaintiffs’ interest in these identifiers, and yet Google
15 produced a Rule 30(b)(6) witness unprepared to answer any questions about those identifiers and
16 potential searches.

17 Dr. Berntson’s testimony at the same time confirmed that there are other identifiers that
18 can and should be used to produce data responsive to Plaintiffs’ requests. For example, Dr.
19 Berntson testified that, [REDACTED]
20 [REDACTED]. Ex. 5, at 78:15–
21 81:20, 126:1–131:1. This is [REDACTED]
22 [REDACTED] Ex. 5, at 294:20–302:8. This data is then [REDACTED]
23 [REDACTED]
24 [REDACTED] by Google. Ex. 5, at 122:10–123:7, 301:7–
25 302:8]; Ex. 8, at ‘78436, ‘78439. None of this data [REDACTED]
26 [REDACTED] has been produced by Google, including for the Plaintiffs.

27 Dr. Berntson also explained that such device data is [REDACTED]
28 [REDACTED], but he could not identify where

1 because he was not prepared. Ex. 5, at 322:8–325:1. He did testify, however, that a [REDACTED]
2 [REDACTED]
3 [REDACTED] Ex. 5, at 52:1–53:7, 150:15–153:18, 266:4–271:20. Google has produced none
4 of these [REDACTED] r the Plaintiffs. Dr. Berntson’s
5 testimony demonstrates that Google could obtain such data from Google’s data storage for the
6 Plaintiffs.

7 Dr. Berntson also conceded that [REDACTED]
8 [REDACTED] Ex. 5, at 52:1–53:7, 150:15–152:4,
9 171:22–172:8, 246:10–252:19, 270:15–271:20. The data associated with Plaintiffs’ Google
10 Analytics IDs also has not been produced by Google, and counsel for Google avoided questions
11 regarding the Google Analytics cookies or cookie values that Google would need from Plaintiffs,
12 if any, to obtain their Google Analytics IDs and associated data. Ex. 7. Indeed, Dr. Berntson
13 testified that Google collects [REDACTED]
14 [REDACTED] Ex. 5, at 266:18–267:9, 309:19–310:18. Again, Google has not
15 produced any of this data [REDACTED], including for the
16 Plaintiffs.

17 LEGAL STANDARDS

18 A motion to compel is ripe when a party has failed to respond adequately to a discovery
19 request. Fed. R. Civ. P. 37(a)(3). A party “may obtain discovery regarding any nonprivileged
20 material that is relevant to any party’s claim or defense and proportional to the needs of the case,
21 considering the importance of the issues at stake in the action, the amount in controversy, the
22 parties’ relative access to relevant information, the parties’ resources, the importance of the
23 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
24 outweighs its likely benefit.” Fed. R. Civ. P. 26(b). “The relevance standard is commonly
25 recognized as one that is necessarily broad in scope in order to encompass any matter that bears
26 on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in
27 the case.” *Doherty v. Comenti Capital Bank & Comenti Bank*, 2017 WL 1885677, *2 (S.D. Cal.
28 May 9, 2017) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). “Wide

1 access to relevant facts serves the integrity and fairness of the judicial process by promoting the
2 search for truth.” *Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir. 1995).

3 The purpose of Rule 30(b)(6) is to streamline the discovery process. *Great Am. Ins. Co. of*
4 *N.Y. v. Vegas Const. Co.*, 251 F.R.D. 534, 538 (D. Nev. 2008). Rule 30(b)(6) “requires a
5 corporation to designate a deponent sufficiently knowledgeable to testify on the corporation’s
6 behalf about information know or reasonably available to the corporation.” *Lofton v. Verizon*
7 *Wireless (VAW) LLC*, 308 F.R.D. 276, 289 (N.D. Cal. 2015) (citing Fed. R. Civ. P. 30).
8 Corporations must not only produce sufficient persons to satisfy the request, “but more
9 importantly, prepare them so that they may give complete, knowledge, and binding answers on
10 behalf of the corporation.” *Id.* (quoting *Guifu Li v. A Perfect Day Franchise, Inc.*, No. 10-cv-
11 01189-LHK, 2011 WL 3895118, *2 (N.D. Cal. Aug. 29, 2011)).

12 When technologies fall within relevant discovery, courts have ordered production of those
13 technologies for inspection and testing by a party’s attorneys and experts. *See, e.g., Elan*
14 *Microelectronics Corp. v. Apple, Inc.*, No. C 09-01531 RS, 2011 WL 2293224, *3 (N.D. Cal. June
15 8, 2011) (requiring Apple to allow plaintiffs’ expert to inspect an internal tool); *S. Peninsula Hosp.,*
16 *Inc. v. Xerox State Healthcare, LLC*, No. 3:15-cv-000177-TMB, 2019 WL 1873297, *6 (D. Alaska
17 Feb. 5, 2019) (compelling defendant to provide plaintiff’s expert with onsite access to a database
18 for purposes of “demonstrat[ing] the existence of the class”).

19 **ARGUMENT**

20 For nearly nine months, Plaintiffs have sought access to data Google collected from and
21 associated with their browsing activity, including the identifiers Google has used to track Plaintiffs
22 through their devices and other means. Google has made incomplete productions consisting of
23 partial data, then designated a witness with limited knowledge on these technologies for Plaintiffs’
24 June 16 30(b)(6) deposition, thus obstructing Plaintiffs’ basic discovery. Plaintiffs’ attorneys and
25 experts are entitled to production of all of Plaintiffs’ data, the deposition of an adequately prepared
26 corporate designee, and should be permitted clean room access to Google’s tools and data to
27 explore and gather Plaintiffs’ data, including without limitation to ascertain the identifiers that
28

Google has used to map and track Plaintiffs and test first-hand how Google’s mapping and tracking technologies work between Google’s products, such as [REDACTED].

A. The Court Should Compel Google to Produce All Data Regarding Plaintiffs

Plaintiffs have sought and are entitled to their data, including all authenticated and unauthenticated identifiers Google uses to map and track Plaintiffs, and the data so associated with them. These include the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] identifiers, [REDACTED] identifiers, as well as any identifiers Google keys or maps to those identifiers, such as [REDACTED]

[REDACTED] Ex. 1; Ex. 5, at 52:1–53:7, 197:3–198:11. These identifiers, and the data so associated with them, are at the heart of this case.

The Court should order production of this data no later than July 16, 2021.

1. Plaintiffs’ Data is Highly Relevant

At the core of this litigation, Plaintiffs allege Google, without consent, surreptitiously intercepts and collects Plaintiffs’ and Class Members’ activity while in private browsing mode, including Chrome’s Incognito mode. *See, e.g.*, Dkt. 136-1 ¶¶ 11, 63, 168, 173, 178, 183, 188, 192. This data collection includes the website information, as well as Plaintiffs’ and Class Members’ respective IP addresses, browser and device information, user IDs, geolocation data, and cookie data, which Google uses to fingerprint individuals across the internet for Google’s benefit, deriving revenue from marketing and improving its products. *Id.*, ¶¶ 63, 100.

Discovery has revealed that Google maps and tracks Plaintiffs’ and Class Members’ private browsing activity even when they are not logged into any accounts (Google or otherwise). Dkt. 140 at 4. Although Google argues private browsing activity is not associated with “specific users,” Dkt. 140, at 5, Google does not deny that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 5, at 153:22–155:18. Indeed, Dr. Berntson testified that [REDACTED]

Ex. 5, at 52:1–53:7, 114:21–118:19, 120:1–123:7, 150:15–152:4, 171:22–172:8, 180:5–181:12, 246:10–252:19, 270:15–271:20.

Instead, Google opposes locating this data because it might violate Google policies and procedures. Dkt. 155, at 5. This opposition is disingenuous: Google systems [REDACTED] [REDACTED]. Ex. 8, at ‘78435, ‘78436, ‘78438. And Plaintiffs provided their consent (for purposes of discovery) to access and produce this data in April. Dkt. 133-1, at 3. Plaintiffs are entitled to the data Google stores and maps to their accounts, devices and hardware, and other identifiers that Google uses to map and track Plaintiffs. The content, format, and volume of this information is paramount.

2. Google Faces No Undue Burden to Produce Plaintiffs’ Data

Google has demonstrated it can readily access Plaintiffs’ data [REDACTED] and other internal technologies. Google has purportedly used some of Plaintiffs’ data to produce some of this data based on the use of these technologies. Google can and should fulfill this discovery obligation without any further delay. *See, e.g., In re Google Litig.*, No. C 08-03172 RMW, 2011 WL 286173 (N.D. Cal. Jan. 27, 2011) (compelling discovery where party failed to demonstrate the burdensome nature of the discovery request).

B. The Court Should Compel Google to Produce an Adequately Prepared Rule 30(b)(6) Deponent

Plaintiffs’ Rule 30(b)(6) deposition notice contained 12 topics. Ex. 4. Google refused to provide any testimony concerning its preservation of logs, databases, storage systems, and data structures containing Plaintiffs’ data for purposes of this litigation, including any changes during the class period (Topic 5). Ex. 5, at 13:1–16, 358:10–16. Dr. Berntson was not prepared to testify about any aspect of logs, databases, storage systems, and data structures containing Plaintiffs’ data [REDACTED] whether it be identification of them (Topic 1), Google’s ability to search them (Topic 2), the origins of them (Topic 3), and the respective retention policies (Topic 4). Ex. 5, at 312:2–313:18, 366:16–367:13. Dr. Berntson was

1 not prepared to testify about [REDACTED]

2 [REDACTED] Topic
3 6). Ex. 5, at 47:18–48:14, 48:16–51:16, 76:19–23, 149:17–150:20, 182:1–182:24, 184:16–185:9.

4 Google’s refusal to permit Dr. Berntson to testify about Topic 5, and failure to adequately
5 prepare Dr. Berntson on Topics 1, 2, 3, 4, and 6, is tantamount to a failure to appear. *Lofton*, 308
6 F.R.D. at 289 (citing *JSR Micro, Inc. v. QBE Ins. Corp.*, No. C-09-03044 PJH (EDL), 2010 WL
7 1957465, *2 (N.D. Cal. May 14, 2010)).

8 The Court should order Google to produce an adequately prepared and knowledgeable
9 witness or witnesses for testimony on Topics 1 through 6 no later than July 16, 2021.

10 **C. The Court Should Compel Google to Provide Plaintiffs’ Attorneys and Experts**
11 **With Clean Room Access, With the Special Master.**

12 Google has represented that it can use [REDACTED] to pull data associated with Plaintiffs
13 and their devices. Dkt. 155, at 4. Instead of doing a search by Plaintiffs’ device identifiers, Google
14 tried to lead Plaintiffs off the trail with new cookie values that Google wants Plaintiffs to generate
15 from new private browsing sessions, while refusing to explain how Google tracks or stored
16 Plaintiffs’ data, including with Google Analytics. Ex. 7. When Google produced the data, it was
17 clear that these searches were not done with the data that Google had available, including device
18 identifiers and IP addresses. *See* Ex. 2. Plaintiffs inquired to determine how the data was derived,
19 and Google admitted it only conducted a limited search [REDACTED]
20 [REDACTED], but not the other data on the Plaintiffs that it already held. Ex. 3.

21 Google did not produce any “unauthenticated data” associated with any of Plaintiffs’
22 various devices or IP addresses (information that Plaintiffs provided in February) and only
23 produced data strictly keyed “to Plaintiffs’ [new] raw cookie values,” without any data derived
24 [REDACTED] or other technologies Google uses [REDACTED]
25 [REDACTED] Ex. 5, at 153:22–155:18. Plaintiffs
26 specifically inquired what [REDACTED] and unauthenticated identifiers are associated
27 with Plaintiffs, their devices, or browsers, and how those identifiers are derived, to which Google
28 refused to respond. Further, in Google’s production [REDACTED]

1 [REDACTED] Ex. 3, was listed as [REDACTED]

2 *See, e.g.*, Ex. 2, at ‘78399.

3 In addition, Google tracks [REDACTED]
4 [REDACTED] Ex. 5, at 266:18–267:9, 269:18–271:10.
5 None of Plaintiffs’ [REDACTED] was produced. All of this is the same
6 limited production Google proposed in the May 6 Joint Submission. Dkt. 155, at 4. Google has
7 thus refused to produce “identification data for the named Plaintiffs . . . [including] authenticated
8 data identifiers as to both the individuals and their devices provided Plaintiffs have provided the
9 necessary device information, as well as unauthenticated data.” Dkt. 147-1, at 2.

10 Google has refused to be cooperative, and has been trying to burn the limited time that
11 Plaintiffs have to complete discovery. The Court should order Google, by July 16, 2021, to permit
12 Plaintiffs’ attorneys and experts with clean room access, with the Special Master, including access
13 to and use of the following tools and data: 1) the search tool shown in Goog-Brwn-000028920; 2)
14 any logs, databases, or other data structures containing data and information concerning the named
15 plaintiffs, their devices, and/or their browsers, whether authenticated or unauthenticated; and 3)
16 any additional tools or data necessary for purposes of identifying the authenticated and
17 unauthenticated identifiers tied to the named plaintiffs, their devices, and/or their browsers. In
18 advance of this access, the Court should also order Google to provide Plaintiffs’ attorneys and
19 experts with documents sufficient to guide their use of the tools and data, including documents
20 that describe the data format and fields.

21 **1. Plaintiffs’ Data is Highly Relevant.**

22 Plaintiffs incorporate by reference the arguments from Section (A)(1) above. Google stores
23 Plaintiffs’ data in various logs, databases, and other data structures accessible only by Google.

24 **2. The Proposed Clean Room is Proportional to the Litigation.**

25 Plaintiffs’ request for clean room access is *less* burdensome than alternatives and provides
26 Google with safeguards against dissemination; neither technical nor confidentiality issues prevent
27 this request. Plaintiffs have retained and disclosed their consulting experts to Google, and Google
28 approved those experts to receive and review all information designated under the Protective

Order—from confidential documents to source code. Dkt. 81. Google’s initial opposition to Plaintiffs’ clean room request was based on the “simple, non-prejudicial alternative” of Plaintiffs providing cookie values from their private browsing sessions to Google so that Google can produce the data Plaintiffs requested. Dkt. 155, at 5; Dkt. 177, at 12–13. Plaintiffs provided those values, and Google limited the production to cryptic, incomplete data, well short of the data Plaintiffs have repeatedly sought. Google has taken a paradoxical position, acknowledging that its internal tools are “confidential” under the protective order, but Plaintiffs’ attorneys’ and experts’ testing any of those tools would be unduly burdensome and not proportional to the litigation. Dkt. 177, at 12–13. Plaintiffs have identified the existence of mapping and tracking technologies, confirmed at least basic functionality of those mapping and tracking technologies (e.g., [REDACTED]), and now seek unencumbered access to those technologies and other tools and data to obtain all data associated with Plaintiffs and their devices and understand how Google uses it. Plaintiffs’ attempts to obtain this discovery through less-drastic means have been met with opposition and incomplete responses, and Google has no basis to complain that Plaintiffs’ request for a clean room is too difficult or burdensome. *See, e.g., In re Google Litig.*, 2011 WL 286173 (compelling discovery where party failed to demonstrate the burdensome nature of the discovery request).

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request the Court enter the order submitted with this motion.

Dated: June 23, 2021

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

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 CASTILLO, and MONIQUE TRUJILLO
 individually and on behalf of all other
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GOOGLE LLC,

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Case No. 5:20-cv-03664-LHK-SVK

**DECLARATION OF JOHN A.
 YANCHUNIS IN SUPPORT OF
 PLAINTIFFS' MOTION TO
 COMPEL RE: P3**

DECLARATION OF JOHN A. YANCHUNIS

I, John A. Yanchunis, declare as follows:

1. I am a partner with the law firm of Morgan & Morgan, P.A., counsel for Plaintiffs in this matter.

2. Pursuant to the Court's June 8, 2021 Order on May 26, 2021 Joint Discovery Submission, Dkt. 191, 191-1, I submit this Declaration providing foundation and a brief explanation of the attachments.

3. Exhibit 1: Google produced this document on April 14, 2021, Bates Labeled GOOG-BRWN-00028920. Google designated this document as Confidential. [REDACTED]

[REDACTED]

4. Exhibit 2: Google produced this document on June 9, 2021, Bates Labeled GOOG-BRWN-00078395-99. Google designated this document as Highly Confidential – Attorneys' Eyes Only. [REDACTED]

[REDACTED]

5. Exhibit 3: This is Google's correspondence responding to Plaintiffs' questions concerning the production reflected in Exhibit 2, above. On June 9, 2021, Google produced what it purports to be [REDACTED]

[REDACTED] On June 10, 2021, Plaintiffs met and conferred with Google to discuss the production. At Google's request, Plaintiffs put their inquiry in writing to Google on June 10, 2021. Google responded with this correspondence on June 15, 2021.

6. Exhibit 4: This is Plaintiffs' April 27, 2021, Notice of Deposition pursuant to Rule 30(b)(6).

7. Exhibit 5: This is the June 16, 2021, deposition transcript from Google's Rule 30(b)(6) designated corporate representative Dr. Glenn Berntson. Google designated this transcript as Confidential, and it contains documents that Google has designated as Confidential and Highly Confidential – Attorneys' Eyes Only.

8. Exhibit 6: Google produced this document on April 9, 2021, Bates Labeled GOOG-BRWN-00026161. Google designated this document as Confidential. [REDACTED]

At the Rule 30(b)(6) deposition, Dr. Berntson had never seen this document before and could not provide any testimony concerning the contents of this document.

9. Exhibit 7: This is an email exchange between the Parties' counsel concerning Plaintiffs' attempts to locate [REDACTED]

10. Exhibit 8: Google produced this document on June 10, 2021, Bates Labeled GOOG-BRWN-00078435–38. Google designated this document as Highly Confidential – Attorneys’ Eyes Only. [REDACTED]

At the Rule 30(b)(6) deposition, Dr. Berntson could not provide any testimony concerning these logs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23d day of June, at Tampa, Florida.

/s/ John A. Yanchunis
John A. Yanchunis

**THESE DOCUMENTS ARE
REDACTED IN THEIR
ENTIRETY**

EXHIBITS 1 – 3

Exhibit 4

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Attorneys for Plaintiffs;
Additional counsel listed in signature blocks below

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

CHASOM BROWN, WILLIAM BYATT,
 JEREMY DAVIS, CHRISTOPHR CASTILLO
 and MONIQUE TRUJILLO, individually and
 on behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

William S. Carmody (admitted *pro hac vice*)
 Shawn Rabin (admitted *pro hac vice*)
 Steven M. Shepard (admitted *pro hac vice*)
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Case No. 5:20-cv-03664-LHK

**PLAINTIFFS' NOTICE OF DEPOSITION
 PURSUANT TO RULE 30(b)(6)**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, on a date to be agreed upon by the Parties, counsel for Plaintiffs will take the videotaped deposition(s) of the designated representative(s) of Google LLC (“Google”) best able to testify as to the Topics set forth in Appendix A. Google has a duty to designate one or more officers, directors, managing agents, or other persons with sufficient knowledge to testify fully regarding the Topics listed in Appendix A. No later than ten business days prior to the deposition, Google shall identify the person(s) who will testify on its behalf pursuant to this notice and the matter(s) about which each person will testify. Google shall also produce to Plaintiffs any documents that Google used or plans to use to prepare the person(s) testifying.

The deposition(s) shall be taken through a mutually agreed upon videoconference program and before a Notary Public or some other officer authorized by law to administer oaths for use at trial. The deposition(s) will be videotaped and will continue from day to day until completed.

Dated: April 27, 2021

BOIES SCHILLER FLEXNER LLP

By: 

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Attorneys for Plaintiffs

APPENDIX A

DEFINITIONS

1. The term “ALL” includes the word “ANY,” and vice versa.

2. The term “CLASS PERIOD” means the time period from June 1, 2016 through the present and ongoing.

3. The terms “CONCERNING” or “RELATING TO” include addressing, analyzing, concerning, constituting, containing, commenting on, discussing, describing, identifying, in connection with, referring to, reflecting, relating, relating to, reporting on, stating, or dealing with, in whole or in part, in addition to their customary and usual meanings, and shall be construed in the broadest sense possible.

4. The term “DOCUMENT” and “DOCUMENTS” shall be synonymous in meaning and equal to the broadest meaning provided by Rule 34 of the Federal Rules of Civil Procedure INCLUDING, without limitation, original and any non-identical copy of every kind of written, printed, typed, recorded, or graphic matter, however produced or reproduced, including all correspondence, letters, telegrams, telexes, messages, memoranda, instructions, emails, handwritten or recorded notes, and all records, schedules, reports, surveys, calculations, transcripts, notes, time cards, personal expense reports, appointment books, calendars, plans, purchase orders, contracts, subcontracts, charts, COMMUNICATIONS, database, data compilation, diary, draft, drawing, electronically stored information, emails, fax, floppy disk, graph, hard drive, image, index, instant message, letter, log, magnetic tape, memorandum, note, optical disk, photograph, report, sound recording, spreadsheet, storage device, text message, version, voicemail or writing. This term shall apply to any DOCUMENT, whether in hard copy or electronic form, on any computers or other system. Any copy of a DOCUMENT that differs in any respect.

5. The term “GOOGLE” means GOOGLE LLC and any of its directors, officers, consultants, agents, representatives, predecessors in interest, subsidiaries, assignees, licensees, employees, attorneys and any other persons acting on GOOGLE LLC’S behalf, including contractors.

6. The term “INCLUDE” or “INCLUDING” means “include, but not limited to” or “including, but not limited to.”

7. The term “INFORMATION” or “USER’S INFORMATION” means information concerning a USER or a USER’S device(s), including a USER’S browsing activity, such as GET requests (or copies thereof) sent from a USER’S browser to a WEBSITE; any referrer page or search queries; any “fingerprint” data (as described in paragraphs 100–04 of the Second Amended Complaint); a USER’S IP address; any geolocation data; and any X-Client Data Header.

8. The term “USER” includes the word “CONSUMERS,” and vice versa

9. The term “YOU” or “YOUR” means or refers to DEFENDANT GOOGLE LLC, and any of his or their attorneys, agents, representatives, predecessors, successors, assigns, and any PERSONs acting or purporting to act on his or their behalf.

GENERAL INSTRUCTIONS

For purposes of reading, interpreting, or construing the scope of the DEFINITIONS, INSTRUCTIONS, and TOPICS, all of the terms shall be given their most expansive and inclusive interpretation. This INCLUDES the following:

- (a) The singular form of a word shall be interpreted as plural and vice versa.
- (b) “And,” “or,” as well as “and/or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Topic anything that might otherwise be construed to be outside the scope of the Topic.
- (c) “All,” “each” and “any” shall be construed as “all, each, and any.”
- (d) The use of a verb in any particular tense shall be construed as the use of the verb in all other tenses as necessary to bring within the scope of the Interrogatory that might otherwise be construed to be outside the scope of the Interrogatory.

TOPICS

1. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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[REDACTED]

PROOF OF SERVICE

I, Vicky L. Ayala, declare:

I am a citizen of the United States and employed in the City and County of San Francisco, CA. I am over the age of 18 and not a party to the within action; my business address is 44 Montgomery St., 41st Floor, San Francisco, CA 94104.

On April 27, 2021, I served the following document(s) described as:

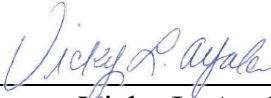
PLAINTIFFS' NOTICE OF DEPOSITION PURSUANT TO RULE 30(b)(6)

- ☐ **BY FACSIMILE TRANSMISSION:** As follows: The papers have been transmitted to a facsimile machine by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The copy of the notice or other paper served by facsimile transmission shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice of other paper was transmitted to the addressee(s).
- ☐ **BY MAIL:** As follows: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, CA, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY OVERNIGHT MAIL:** As follows: I am readily familiar with the firm's practice of collection and processing correspondence for overnight mailing. Under that practice, it would be deposited with overnight mail on that same day prepaid at San Francisco, CA in the ordinary course of business.
- ☒ **BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from vayala@bsflp.com on April 27, 2021, by transmitting a PDF format copy of such document(s) to each such person at the e-mail address(es) listed below their address(es). The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

1 2 3 4	Andrew H. Schapiro (<i>pro hac vice</i>) Quinn Emanuel Urquhart & Sullivan, LLP 191 N. Wacker Drive, Suite 2700 Chicago, IL 60606 Tel: 312-705-7400 Fax: 312-705-7401 andrewschapiro@quinnemanuel.com	<i>Attorney for Defendant</i>
5 6 7 8 9	Stephen A. Broome Viola Trebicka Quinn Emanuel Urquhart & Sullivan, LLP 865 S. Figueroa Street, 10 th Floor Los Angeles, CA 90017 Tel: 213-443-3000 Fax: 213-443-3100 stephenbroome@quinnemanuel.com violatrebicka@quinnemanuel.com	<i>Attorneys for Defendant</i>
10 11 12 13 14	Diane M. Doolittle Thao Thai Quinn Emanuel Urquhart & Sullivan, LLP 555 Twin Dolphin Drive, 5 th Floor Redwood Shores, CA 94065 Tel: 650-801-5000 Fax: 650-801-5100 dianedoolittle@quinnemanuel.com thaothai@quinnemanuel.com	<i>Attorneys for Defendant</i>
15 16 17 18 19	William Burck (<i>pro hac vice</i>) Josef Ansorge (<i>pro hac vice</i>) Quinn Emanuel Urquhart & Sullivan, LLP 1300 I Street NW, Suite 900 Washington, D.C., 20005 Tel: 202-538-8000 Fax: 202-538-8100 williamburck@quinnemanuel.com josefansorge@quinnemanuel.com	<i>Attorneys for Defendant</i>
20 21 22 23	Jonathan Tse Quinn Emanuel Urquhart & Sullivan, LLP 50 California Street, 22 nd Floor San Francisco, CA 94111 Tel: 415-875-6600 Fax: 415-875-6700 jonathantse@quinnemanuel.com	<i>Attorney for Defendant</i>

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

1 Executed on April 27, 2021, at San Francisco, CA.

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THESE DOCUMENTS ARE
REDACTED IN THEIR
ENTIRETY

EXHIBITS 5 – 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No.: 5:20-cv-03664-LHK-SVK

**[PROPOSED] ORDER GRANTING
PLAINTIFFS MOTION TO COMPEL
REGARDING DISPUTE P3**

[PROPOSED] ORDER

Before the Court is Plaintiffs' Motion to Compel Regarding Dispute P3.

Having considered Plaintiffs' Motion, and good cause having been shown, the Court

ORDERS as follows:

Plaintiffs' Data:

By July 16, 2021, Google shall produce to Plaintiffs all of Plaintiffs' data. This shall include all authenticated and unauthenticated identifiers Google uses to map and track Plaintiffs, and the data so associated with them, including [REDACTED] listed in GOOG-BRWN-00028920, [REDACTED] identifiers, [REDACTED] identifiers, and any identifiers that Google keys or maps to those identifiers.

Rule 30(b)(6) Deposition(s):

By July 16, 2021, Google shall produce for testimony an adequately prepared and knowledgeable witness or witnesses designated for Topics 1 through 6 of Plaintiffs' April 27, 2021 Rule 30(b)(6) Deposition Notice. The testimony shall not be limited to Google Analytics or Google Ad Manager; the witness or witnesses shall be prepared to testify about all aspects of Google's logs, databases, storage systems, and data structures containing Plaintiffs' and Class Members' data. The witness or witnesses shall also be prepared to testify about the search tool shown in

1 GOOG-BRWN-00028920. The witness or witnesses shall also be prepared to testify about Topic
2 5 (Google's preservation of the logs, databases, storage systems, and data structures containing
3 Plaintiffs' and Class Members' data).

4 Onsite Access to Internal Google Tools and Data:

5 By July 16, 2021, Google shall permit Plaintiffs' attorneys and experts onsite access to a
6 clean room in which Plaintiffs' attorneys and experts will be permitted to access and use internal
7 Google tools, logs, and data for purposes of identifying the authenticated and unauthenticated data
8 concerning the named plaintiffs and their devices. Plaintiffs' attorneys and experts will be granted
9 access to and use of the following tools and data:

- 10 1. The search tool shown in GOOG-BRWN-00028920;
- 11 2. Any logs, databases, or other data structures containing data and information
12 concerning the named plaintiffs, their devices, and/or their browsers, whether
13 authenticated or unauthenticated;
- 14 3. Any additional tools or data necessary for purposes of identifying the authenticated and
15 unauthenticated identifiers tied to the named plaintiffs, their devices, and/or their
16 browsers.

17 Google will make these tools and data available at a location of Google's choosing. Google
18 may supervise Plaintiffs' attorneys and experts' access to and use of these tools and data.

19 Google will also in advance provide Plaintiffs' attorneys and experts with documents
20 sufficient to guide their use of the tools and data, including documents that describe the data format
21 and fields.

22 Any access to Google tools and data and any information derived therefrom will be subject
23 to the terms of the parties' Stipulated Protective Order (Dkt. No. 81).

24 This relief will not prevent or otherwise exclude Plaintiffs from seeking further relief
25 related to Request for Production Nos. 10 and 18 (Disputes P6 and P3) upon a showing of good
26 cause.

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IT IS SO ORDERED.

DATED: _____

Honorable Susan van Keulen
United States Magistrate Judge